IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06/02/2003

CORAM

THE HON'BLE MR.JUSTICE E.PADMANABHAN

WRIT PETITION NO. 4944 OF 1999

R.Rajupandi ..Petitioner

-Vs-

1. The Tamil Nadu Electricity Board,
rep. by its Secretary
Anna Salai, Chennai

2. The Chairman,
TNEB, Anna Salai, Chennai ..Respondents

Petition filed under Article 226 of The Constitution of India praying for the issue of a writ of certiorarified Mandamus, as stated therein.

For petitioner :: Mr.V.Alagirisamy S.C.,
for Miss.K.Suguna

For respondents:: Mr.V.Radhakrishnan

:O R D E R

The writ petitioner prays for the issue of a writ of certiorarified mandamus to call for and quash the proceedings of the first respondent dated 23.9.1997 issued in Reference Memorandum 43778-B1/96-6 and the order of the first respondent dated 21.7. issued in Memorandum Number 83107/B1/97-7 and consequently direct the respondents to correct the date of birth of the petitioner as 14.10.1946 instead of 5.5.1945 in the Service Register and also award consequential benefits.

2. Heard Mr.K.Alagirisamy, learned senior counsel appearing for Miss.V.Suguna for the petitioner and Mr.V.Radhakrishnan, learned counsel appearing for the respondents.

3. The petitioner presently working as Chief Engineer, (Electrical) in the first respondent Tamil Nadu Electricity Board joined the Electricity Board during 1969 as Junior Engineer and he was promoted from time to time. At the time of entry his d of birth was entered in the Service Register as 5.5.1945 based upon on the entries found in his SSLC book and as furnished by

the petitioner.

4. The petitioner submitted a representation on 31.2.1973 to the Chief Engineer (General) seeking for alteration of his date of birth from 5.5.1945 to 14.10.1946. The Chief Engineer(Personnel) on 22.8.1977 dismissed the application as there is no c usive evidence to establish the alteration of date of birth applied for. The said order has reached finality though the petitioner claims that the appeal preferred during 1977 has not been dispose of. However, the fact is the rejection dated 22.8.19 977 has reached finality and holds good. The petitioner also had not taken any steps to challenge the said rejection. After a lapse of fifteen long years, the petitioner again on 4.3.1992 moved the respondent while adding that the date of birth of so me of the Engineers were altered recently and his request should also be considered. The Chief Engineer (Personnel) rejected the same as the date of birth entered cannot be altered contrary to the entry in the SSLC Book unless it is corrected. The p etitioner thereafter moved the District Munsif Court, Melur instituted O.S.No.135 of 1993 by impleading his father and the Director of School Education as the defendants 1 and 2 praying for a declaration that his date of birth is 14.10.1946 and for a mandatory injunction directing the second defendant therein to correct date of birth in the SSLC Book. To the said suit the petitioner has not impleaded his employer, the Electricity Board. The suit came to be decreed on 27.10.1994. Thereafter the pet itioner moved the respondent on 2.8.1996 enclosing the certified copy of the decree as well as amended SSLC Book while requesting for correction of date of birth. The second respondent rejected the said request by his order dated 23.9.1997 on the gro und that the application for alteration of date of birth is barred by limitation in terms of service regulation and that the civil court decree will not bind the Electricity Board as it is not a party.

5. Thereafter, once again the petitioner moved the respondent on 23.10.1997 to reconsider the decision dated 23.9.1997 which was rejected on 21.7.1998. In this writ petition the said order of rejection dated 23.9.1997 as well as declining to r w dated 21.7.1998 are being challenged.

6. Mr. K.Alagirisamy, learned senior counsel appearing for the writ petitioner contended that the objection as to limitation raised by the respondent is a misconception, that when once entry in the SSLC Book has been altered, the respondents are b to alter the entry in the Service Register, that in respect of identically placed Engineer, Mr.Nandagopal, Engineer employed in the Electricity Board, the respondents have ordered alteration that the petitioner cannot be treated differently and tha t for correction, there is no limitation in terms of the Regulation 110-A. The learned Senior Counsel also contended that the rejection is arbitrary, illegal and therefore the impugned proceedings are liable to be quashed and a mandamus has to be issued as prayed for consequentially.

7. Per contra, the respondents contested the writ petition on various grounds contending that there are no merits, that the rejection of the request as early as 1973 is a bar and it constitute res judicata, that the judgement of the civil court is binding on the Electricity Board, that the proceedings rejecting the requests are not liable to be interfered as there is neither

error, nor illegality, that it is not a clerical mistake which could be corrected under Regulation 110-A, that the civil c ourt has merely granted a decree to correct the SSLC book which is of no consequence, that the impugned proceedings do not suffer with infirmity, illegality or irregularity, various contentions advanced are untenable, that in terms of Regulation 110(b) (vi) there could be no correction even in terms of the civil court decree, that the civil court has decided only the request of the petitioner for alteration of date of birth in the SSLC book and has declined to grant the relief of alteration in the serv ice register, that mere correction of entry in the SSLC book will not enable the petitioner to seek for correction of date of birth in his service register, nor it is incumbent on the part of the respondents to correct the entry in the service register, that the request of the petitioner has already been rejected not only on the ground of limitation, but also on merits ;which order has reached finality and the petitioner cannot again and again seek alteration or reopen the matter which has already re ached finality, that the petitioner has secured appointment in consideration of various factors including date of birth as was accepted by theBoard and he cannot seek for alteration of the same, that the civil court's decree is not binding and the pet itioner is not entitled to any relief.

8. The following points arise for consideration:-

(A) Whether the petitioner is entitled for the issue of a writ of certiorari as prayed or to quash the impugned proceedings?

(B) Whether the petitioner is entitled to seek for a mandamus to alter his date of birth in the Service Register?

(C.) Whether repeated request of the petitioner for alteration of date of birth is permissible?

(D) Whether the earlier rejections bars the petitioner from seeking for alteration of date of birth? Whether the petitioner could be permitted to reopen the issue?

(E) Whether the decree and alteration of date of birth in the SSLC Book is binding on the respondent? and whether such a decree or alteration has got any legal efficacy?

(F) Whether the petitioner could plead discrimination on the ground that a request for alteration has been granted in favour of his colleague Nandagopal?

(G) To what relief the petitioner is entitled to?

9. All these points were raised and they have to be answered though the scope of the writ petition is very limited and the scope of judicial review with respect to alteration of date of birth is very limited. All the above points could be consi d together as they are all interconnected.

10. The admitted facts being that the petitioner's date of birth as

was originally entered in the SSLC Book is 5.5.1945. On that basis, and furnishing the said date, the petitioner applied for the post and he was selected and appointed. The said has also been entered in the Service Register of the petitioner. The petitioner approached the respondent for alteration in terms of the Tamil Nadu Electricity Board Service Regulation 110 during the year 1973. After consideration on merits the said request was rejected on 28.2.1977 holding that no material has been placed and no case has been made out for alteration of date of birth. The said rejection order has not been challenged and reached finality. There is no controversy in this respec t. After fifteen long years during the year 1992 once again the petitioner set the ball in motion in an attempt to get his date of birth corrected so that he will extension of his service by 16 months or thereabout. The only ground on which the petiti oner once again approached the respondent being as the date of birth in respect of certain of his colleagues have been altered after the expiration of the limitation. The respondent rejected the said request and incidentally sated that there ca nnot be any alteration in the date of birth different from the SSLC book till the entry in the SSLC book is altered. Such a reply is sought to be taken advantage by the petitioner even though there is no force, nor it could be held that the said repl y is binding on the respondent to correct the date of birth nor the principle of estoppel could be invoked.

11. Admittedly, the petitioner instituted the suit impleading his father and the Director of School Education and got a decree declaring that his date of birth is 14.10.1946 and a mandatory injunction has been granted directing the Director of ol Education to correct his date of birth in the SSLC book. To the said Civil Court proceedings, the Electricity Board, the employer has not been impleaded as one of the defendants.

12. The learned District Munsif of Melur in O.S.No.135 of 1993 while deciding the issue viz., whether the suit is bad for non joinder of party namely Electricity Board, concluded that the suit is not bad for non joinder of electricity Board as suit is not for correction of date of birth in the Service Register but, for alteration of date of birth in the SLC Book of the petitioner. Based upon the decree granted the entry in the SSLC book was corrected by the Director of School Education and t he petitioner moved again for alteration.

13. The respondent Board not being a party to the civil court, has taken the stand that the judgment and decree is not binding on them. It is further contended that such alteration in the SSLC book will not ipso facto would require the respond to correct the date of birth in the Service Register. One ther objection being it is not a clerical error but it is an alteration of date of birth which has already been rejected and such an issue cannot be allowed to be reopened, nor it could be all owed to be reopened or reagitated.

14. The learned senior counsel for the petitioner sought to make a distinction between Regulation 110 (b) viz-a-viz Regulation 110-A. Regulation 110-A provides for correction of date of birth while Regulation 110(b) provides for alteration of date irth. According to the learned senior counsel

the correction of date of birth could be sought for at any time and such correction has to be effected once the entries in the SSLC book stand corrected. This contention of the learned senior counsel overloo ks the very terminology of Regulation 110-A. Regulation 110-A will have no application to the facts of the present case and this is clear on a reading of the said regulation. It is not a clerical error nor a wrong entry, but the earliest entry in the S ervice Register has been made in consonance with the date of birth entry then existed in the SSLC book. The contention in this respect advanced by the counsel for the petitioner cannot be countenanced and the dichotomy sought to be made out by the c ounsel for the petitioner will not alter the situation nor it is acceptable.

15. Admittedly entries have been made as per the entries of the very date of birth entered in the SSLC book at the time of entry into the service. Merely because on a later date the petitioner secured a decree for mandatory injunction, the same wi ot alter the date of birth in the Service Register and that will not enable the petitioner to get alteration as a matter of course, nor Regulation 110 (A) will apply to the present situation, Hence the contention advanced cannot be coutenanced.

16. Admittedly earliest request made within the period of five years from the date of entry under Regulation 110 (b) has been rejected and such a request cannot be repeated once over after keeping silent for fifteen long years. Incidentally we have examine what is the clerical error or a bona fide error. This is not a case of clerical error at all. In this respect it is useful to refer to the pronouncement in Union of India Vs. C.Ramasamy, reported in 1997 (4) SCC 647. The Apex Court held thus:-

"22. It was faintly submitted that on the basis of the birth certificate obtained from the Sub-Registrar's Office by the respondent as well as his horoscope it should be held that there was a bona fide clerical mistake and, therefore, the date of birth c ould be corrected. We are unable to accept the submission. Bona fide clerical error would normally be one where an officer has indicated a particular date of birth in his application form or any other document at the time of his employment but, by mistak e or oversight a different date has been recorded. In the present case admittedly the date of birth indicated in the application form filled in for the purpose of taking the competitive examination was that of 17-6-1939. This date was then incorporated i n his descriptive roll kept in his service record and this was duly signed by the respondent. Admittedly the respondent also believed this to be his correct date of birth, therefore, it was not a case where the date of 17-6-1939 had been incorrectly reco rded in the service-book as a result of any bona fide clerical mistake. In fact in his original representation it was not even suggested by the respondent that there had been any clerical mistake. The positive case put forth by the respondent was that it is after the demise of his mother that he had discovered that his real date of birth was 15-6-1941 and not 17-6-1939." (Emphasis supplied)

17. In the very same pronouncement, the Apex Court also held that it would be against the public policy to permit a change in the date of birth to

enable longer benefit to the person concerned. The Apex Court held that the rule of estoppel rule ly in such a case. The Apex Court held thus:-
25. In matters relating to appointment to service various factors are taken into consideration before making a selection or an appointment. One of the relevant circumstances is the age of the person who is sought to be appointed. It may not be possi to conclusively prove that an advantage had been gained by representing a date of birth which is different than that which is later sought to be incorporated...".

"....In such a case, it cannot be said that advantage is not obtained by a person because of an earlier date of birth, if he subsequently claims to be younger in age, after taking that advantage. In such a situation, it would be against public policy to permit such a change to enable longer benefit to the person concerned. This being so, we find it difficult to accept the broad proposition that the principle of estoppel would not apply in such a case where the age of a person who is sought to be appoint ed may be a relevant consideration to assess his suitability...".

"....If such a decision is challenged the court also ought not to grant any relief even if it is shown that the date of birth, as originally recorded, was incorrect because the candidate concerned had represented a different date of birth to be taken int o consideration obviously with a view that that would be to his advantage. Once having secured entry into the service, possibly in preference to other candidates, then the principle of estoppel would clearly be applicable and relief of change of date of birth can be legitimately denied..." (Emphasis supplied)

18. Taking up the next issue of the repeated representation and attempt to correct even after rejection, it would be useful to refer to the same pronouncement in Union of India Vs. C.Ramawamy, where the Apex Court deprecated such attempts and de ed to grant the relief. The Apex Court also held that it is difficult to accept the broad proposition that the principle of estoppel would not apply in such a case.

19. In Government of Andhra Pradesh Vs. Hayagreev Sarma, reported in 1990 (2) SCC 682, the Apex Court held that when a request for alteration of date of birth has already been rejected prior to the enforcement of a rule, he would not be entitled aintain an application for any alteration of his date of birth thereafter once again. The Apex Court held that the request for alteration of date of birth once again or second time is impermissible although the earlier request has been rejected on di fferent ground. This pronouncement of the Apex Court is on the point and squarely applies to the facts of the present case.

20. In Bharath Cooking coal Ltd., Vs. Shib Kumar Dushad and others reported in (2000) 8 SCC 696, the Apex Court held thus:-

"17. The date of birth of an employee is not only important for the employee but for the employer also. On the length of service put in by the employee depends the quantum of retiral benefits he would be entitled to. Therefore,

while determining the disp ute in such matters courts should bear in mind that a change of the date of birth long after joining service, particularly when the employee is due to retire shortly, will upset the date recorded in the service records maintained in due course of adminis tration should not generally be accepted. In such a case the burden is heavy on the employee who comes to the court with the case that the date of birth in the service record maintained by the employer is untrue and incorrect. The burden can be discharge d only by producing acceptable evidence of a clinching nature. We are constrained to make this observation as we find that in a large number of cases employees who are on the verge of retirement raise a dispute regarding correctness of the date of birth entered in the service record and the courts are inclined to pass an interim order for continuance of such employee beyond the date of superannuation on the basis of the entry of date of birth in the service record. Such a situation cannot be commended f or the reason that the court in passing such an interim order grants a relief to the employee even before determining the issue regarding correctness of the date of birth entered in the service record."

The earlier pronouncement in Burn Standard Co Ltd., Vs. Dinabandhu Majumbdar (1995[4] SCC 172) has been followed by D.P.Mahopatra, J., in the above pronouncement.

21. In respect of the conduct on the part of the petitioner in not impleading the respondent Board to the suit, the attention of the court is drawn to the pronouncement of the Apex Court in Director of Technical Education and others Vs. Sita Devi, rted in 1991 Supple. (2) SCC 387 where the Apex Court held that a decree without impleading the necessary party is not binding on the employer in the matter of determination of date of birth and the decree obtained by the petitioner is of little conse quence. The decree is the only basis on which the the date of birth has been altered in the SSLC and only on that basis relief has been sought for in this writ petition. The Apex Court in the above pronouncement held thus:

"5. We would have agreed with Mr Madhava Reddy if the decree had been made the sole foundation for the relief granted by the Tribunal. But the additional fact that the original certificate was produced and the Tribunal looked into the dates of birth of t he other members of the family to find out the reasonableness of the claim of the respondent about her changed date of birth are features which make the dispute factual and the conclusion reached by the Tribunal must therefore, be taken to be one where o n facts found the decision has been taken. What exactly is the date of birth of a person is undoubtedly a question of fact and, therefore, the objection raised by learned counsel for the respondent has to be accepted.
6. We, therefore, clarify the legal position that a decree without the State being a party is not binding on the employer (the State) in the matter of determination of the date of birth. But in the present case the Tribunal, on the basis of materials pla ced before it, apart from the decree of the civil court, has come to its own conclusion on the question of fact. We, therefore, dismiss the appeal. The respondent, we are told, has on the basis of the original date of birth, already superannuated. She wo uld on the basis of the relief granted to her by the Tribunal be entitled to be called back to service

for the residue of the period on the basis of the changed date of birth and be treated to be continuing in service for all other purposes." (emphasis s upplied)

22. The above pronouncement is the answer to the contention that decree has to be respected and altered entry of date of birth in the SSLC book has to be given effect by altering the entry in the Service Register as well. Such a contention cannot b stained nor the petitioner shall be permitted to reopen the issue which has reached finality nor successive application is maintainable in law and deserves to be rejected.

23. In Secretary and Commissioner Vs.Kirubakaran, reported in 1994 Supple. (1) SCC 155, the Apex Court held that the time limit for making an application for correction should be strictly complied with and no application could be filed after l number of years. In this case, earlier application though filed within time has been rejected and after lapse of 15 long years, the petitioner once again attempts which is not permissible in law.

24. It is also to be pointed out that while seeking for alteration of entry relating to date of birth it should be shown that the recorded date of birth was made due to negligence of some other person or that the same was an obvious clerical r. When this is not established no relief could be granted as held by the Apex court in Commissioner of Police Vs. Bagawan v.Lahane, reported in 1991 (1) SCC 247 held thus:-
"Admittedly, the School Leaving Certificate was produced by the respondent and the entry in the service-book was made on the basis of the date of birth mentioned therein. As he failed to show that the said entry was made due to want of care on the part o f some other person or that it was an obvious clerical error, the Tribunal ought not to have directed the appellant to correct the same."

25. In Math Vikrikar Karmachari Sangathan Vs. State of Maharashtra, reported in 2000 (2) SCC 552, while examinging the scope of res judicata and constructive res judicata with respect to service matters, the Apex Court applied the principle of res cata. But, in this case there is no order of any tribunal or court. But the respondent has rejected the application on merits in terms of the regulation and having allowed the rejection to become final, it is too late for the petitioner to once agai n move after 15 long years and once again seek to revive or resurrect or reagitate or reopen such an issue by merely getting a decree of the civil court, to which the respondnts are not parties and as held by the Apex Court such a decree is not binding on the employer. is not binding on the respondent. This has to be pointed out as it is the answer to the petitioner's contention that there could be a correction of date of birth at any time.

26. The Apex Court in State of Tamil Nadu Vs. T.N.Venugopal, reported in 1994 (6) SCC 302 reiterated the limitation within which an application has to be made.

27. Incidentally, the jurisdiction of Civil Court to grant a decree for mandatory injunction also has to be pointed out. In Ramamurthy Vs.

Director of Public Instructions, reported in AIR 1944, Madras 187 as well as Director of Public Instructions V ohandass, reported in 1955 (I) MLJ 488 the Division Bench held that when once the individual ceased to be a student there was nothing in relation to him that the Director of Public Instruction is called upon by any regulation to correct the date of birth entry and no mandamus could be granted. That apart, the entry in the SSLC book was made nearly thirty years ago and when the petitioner seeks for a declaration and mandatory injunction for correction of date of birth which he knew immediately after joining of the service, he has to seek for such a declaration or for mandatory injunction within the period of limitation as prescribed by Article 58 of The Limitation Act and he has also slept over the matter for nearly two decades. Therefore g rant of relief of mandatory injunction in such a suit cannot be countenanced. The relief of mandatory injunction sought for after a lapse of more than two decades from the date on which the entry has been made in the SSLC book is fatal to the very cla im and it is not known as to how the mandatory injunction has been granted. However, such a decree which is not binding on the respondent-Electricity Board. Hence, this court need not dwell with the matter any longer.

28. In the circumstances, this court holds that the impugned proceedings are not liable to be interfered in exercise of the power of judicial review under Art.226 as there is neither an illegality, nor there is an error apparent on the face of t ecord and the rejection of the request for alteration is well founded. This court also declines to exercise its discretion in favour of the petitioner in view of the rejection of the request at the earliest opportunity on merits and allowing the matter to reach finality, besides his attempt to reopen the matter at this point of time, as has been held by the Supreme Court necessarily has to be turned down. The discrimination pleaded also cannot be sustained as such contention is devoid of merits. Ille gality committed in one case cannot be a ground to claim benefit, nor the same could be relied upon to sustain the plea of discrimination.

29. In the result, all the points are answered against the petitioner and the writ petition is dismissed, but without costs.

Internet:Yes
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Copy to:-

1. The Tamil Nadu Electricity Board,
rep. by its Secretary
Anna Salai, Chennai

2. The Chairman,
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